



## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2020-0016]

#### Meeting to Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Announcement of meetings.

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**SUMMARY:** The Federal Emergency Management Agency (FEMA) is holding a series of meetings to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic.

**DATES:** The first meeting took place on Thursday, March 4, 2021, from 3 to 5 p.m. Eastern Time (ET). The second meeting took place on Wednesday, March 10, 2021, from 3 to 5 p.m. ET. The third meeting took place on Thursday, March 11, 2021, from 3 to 5 p.m. ET. A fourth meeting will take place on Thursday, March 18, 2021, from 3 to 5 p.m. ET.

**FOR FURTHER INFORMATION CONTACT:** Robert Glenn, Office of Business, Industry, Infrastructure Integration, via email at [OB3I@fema.dhs.gov](mailto:OB3I@fema.dhs.gov) or via phone at (202) 212-1666.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is provided as required by section 708(h)(8) of the Defense Production Act (DPA), 50 U.S.C. 4558(h)(8), and consistent with 44 CFR part 332.

The DPA authorizes the making of “voluntary agreements and plans of action” with, among others, representatives of industry and business to help provide for the

national defense.<sup>1</sup> The President’s authority to facilitate voluntary agreements was delegated to the Secretary of Homeland Security with respect to responding to the spread of COVID-19 within the United States in Executive Order 13911.<sup>2</sup> The Secretary of Homeland Security has further delegated this authority to the FEMA Administrator.<sup>3</sup>

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the *Federal Register* a “Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic” (Voluntary Agreement).<sup>4</sup> Unless terminated prior to that date, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Agreement may be used to prepare for or respond to any pandemic, including COVID-19, during that time.

On December 7, 2020, the first plan of action under the Voluntary Agreement – the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID-19 (Plan of Action) – was finalized.<sup>5</sup> The Plan of Action established several sub-committees under the Voluntary Agreement, focusing on different aspects of the Plan of Action.

These meetings were or will be chaired by the FEMA Administrator or his delegate, and attended by the Attorney General or his delegate and the Chairman of the

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<sup>1</sup> 50 U.S.C. 4558(c)(1).

<sup>2</sup> 85 FR 18403 (Apr. 1, 2020).

<sup>3</sup> DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

<sup>4</sup> 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the *Federal Register* on the same day. 85 FR 50049 (Aug. 17, 2020).

<sup>5</sup> See 85 FR 78869 (Dec. 7, 2020). See also 85 FR 79020 (Dec. 8, 2020).

Federal Trade Commission or his delegate. In implementing the Voluntary Agreement, FEMA adheres to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

*Meeting Objectives:* The objectives of all of the meetings are as follows:

1. Gather committee Participants and Attendees to ask targeted questions for situational awareness.
2. Establish priorities for COVID-19 PPE under the Voluntary Agreement.
3. Identify tasks that should be completed under the appropriate Sub-Committee.
4. Identify information gaps and areas that merit sharing (both from FEMA to the private sector and vice versa).

*Meetings Closed to the Public:* By default, the DPA requires meetings held to implement a voluntary agreement or plan of action be open to the public.<sup>6</sup> However, attendance may be limited if the Sponsor<sup>7</sup> of the voluntary agreement finds that the matter to be discussed at a meeting falls within the purview of matters described in 5 U.S.C. 552b(c). The Sponsor of the Voluntary Agreement, the FEMA Administrator, found that these meetings to implement the Voluntary Agreement involve matters which fall within the purview of matters described in 5 U.S.C. 552b(c) and the meetings will therefore be closed to the public.

Specifically, these meetings to implement the Voluntary Agreement may require participants to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for meetings to be closed pursuant to 5 U.S.C. 552b(c)(4). In addition, the success of the Voluntary Agreement depends wholly on the willing and enthusiastic participation of private sector participants. Failure to close these meetings could have a strong chilling effect on participation by the private sector and cause a substantial risk that sensitive information

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<sup>6</sup> See 50 U.S.C. 4558(h)(7).

<sup>7</sup> “[T]he individual designated by the President in subsection (c)(2) [of section 708 of the DPA] to administer the voluntary agreement, or plan of action.” 50 U.S.C. 4558(h)(7).

will be prematurely released to the public, resulting in participants withdrawing their support from the Voluntary Agreement and thus significantly frustrating the implementation of the Voluntary Agreement. Frustration of an agency's objective due to premature disclosure of information allows for the closure of a meeting pursuant to 5 U.S.C. 552b(c)(9)(B).

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[FR Doc. 2021-05232 Filed: 3/11/2021 8:45 am; Publication Date: 3/12/2021]